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18
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20
21 IN THE UNITED STATES DISTRICT COURT
22 FOR THE DISTRICT OF NEVADA

23
24 ITEX CORPORATION, a Nevada corporation,

25 Plaintiff,

v.

26
27 GLOBAL LINKS CORP., a Nevada
28 corporation, and BXI TRADE EXCHANGE,
INC., a Nevada corporation,

Defendants.

Case No.: 2:14-CV-00057-RCJ-NJK

**~~PROPOSED~~ STIPULATED
PROTECTIVE ORDER AND
CONFIDENTIALITY UNDERTAKING**

29
30 IT IS HEREBY STIPULATED, pursuant to Fed. R. Civ. P. 26(c), by and among Plaintiff
31 and Defendants in this action (each a “party” and collectively “the parties”), by and through their
32 attorneys of record, that this Court may enter the following Stipulated Protective Order (“Protective
33 Order”) to safeguard confidential and attorneys’ eyes only information produced or disclosed in this
34 litigation.

35
36 This Protective Order is necessary because this case involves the parties’ confidential and
37 proprietary information. The parties may make requests for information that would call for
38 confidential, proprietary and/or trade secret information, and this information could lose its value if

1 disclosed to the public or improperly used outside of this litigation. It is also likely that the parties'
2 confidential, proprietary and/or trade secret information will be submitted to the Court to assist in
3 ruling on various motions. This information could lose its value and legally protected status if
4 disclosed to the public.

5 **PROTECTIVE ORDER**

6 IT IS HEREBY ORDERED that the following Protective Order be entered in this matter
7 and that the Parties shall follow the procedures set forth below with respect to information,
8 documents, or things produced in this litigation:

9 To protect the confidentiality of proprietary and trade secret information contained in
10 documents produced, and other information disclosed in this litigation, the Court orders as follows:

11 1. This Protective Order shall be applicable to and govern all depositions, documents,
12 information or things produced in response to requests for production of documents, answers to
13 interrogatories, responses to requests for admissions and all other discovery taken pursuant to the
14 Federal Rules of Civil Procedure, as well as testimony adduced at trial or other hearings, matters in
15 evidence and other information that the disclosing party or the owner of the disclosed information
16 designates as "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" (referred to generally as
17 "Protected Information") hereafter furnished, directly or indirectly, by or on behalf of any party or
18 any non-party witness in connection with this action. As used herein, "disclosing party" shall refer
19 to the parties to this Protective Order and to other parties (whether other parties to this action or
20 third parties) who give testimony or produce documents or other information.

22 2. The following information may be designated as CONFIDENTIAL: any trade secret
23 or other confidential research, design, development, financial, or commercial information (as
24 defined by Nevada State law) contained in any document, discovery response or testimony;

25 3. The following information may be designated as ATTORNEYS' EYES ONLY:
26 information that would fall within the scope of Paragraph 2 but that the disclosing party or owner in
27 good faith reasonably believes to comprise particularly sensitive confidential material that warrants
28 further restricted disclosure. Information may only be designated ATTORNEYS' EYES ONLY if

1 the disclosing party or owner believes in good faith that designation as CONFIDENTIAL will not
2 provide adequate protection.

3 4. A disclosing party or the owner of the disclosed information may also designate
4 materials as CONFIDENTIAL or ATTORNEYS' EYES ONLY if it contains information that the
5 disclosing party or owner, in good faith, believes is confidential or proprietary to a third party.

6 5. Disclosing parties and owners of disclosed information shall designate
7 CONFIDENTIAL or ATTORNEYS' EYES ONLY information as follows:

8 (a). In the case of discovery responses and the information contained therein,
9 designation shall be made by placing the following legend on every page of any such document
10 prior to production: CONFIDENTIAL or ATTORNEYS' EYES ONLY. In the event that a party
11 inadvertently fails to stamp or otherwise designate a document or other information as
12 CONFIDENTIAL or ATTORNEYS' EYES ONLY at the time of its production, that party shall
13 have ten (10) business days after such production to so stamp or otherwise designate the document
14 or other information.

15 (b). In the case of depositions, designation of the portion of the transcript
16 (including exhibits) which contains CONFIDENTIAL or ATTORNEYS' EYES ONLY information
17 shall be made by a statement to such effect on the record in the course of the deposition or, upon
18 review of such transcript, by counsel for the party to whose CONFIDENTIAL or ATTORNEYS'
19 EYES ONLY information the deponent has had access. If a party wishes to designate portions of a
20 deposition transcript under this Protective Order after a deposition, that party's counsel shall make
21 such designation within ten (10) business days after counsel's receipt of the final transcript. Counsel
22 shall list on a separate piece of paper the numbers of the pages of the transcript containing
23 CONFIDENTIAL or ATTORNEYS' EYES ONLY information, insert the list at the end of the
24 transcript, and mail copies of the list to counsel for all parties so that it may be affixed to the face of
25 the transcript and each copy thereof. Pending such designation by counsel, the entire deposition
26 transcript shall be deemed ATTORNEYS' EYES ONLY, except exhibits shall maintain their
27 existing designations. If no designation is made during the deposition or within ten (10) business
28

1 days after receipt of the transcript, the transcript shall be considered not to contain any
2 CONFIDENTIAL or ATTORNEYS' EYES ONLY information.

3 (c). Transcripts of depositions will not be filed with the Court unless it is
4 necessary to do so for purposes of hearings, trial, motions for summary judgment, or other matters.
5 If a deposition transcript is filed and if it contains CONFIDENTIAL or ATTORNEYS' EYES
6 ONLY information, the transcript shall bear the appropriate legend on the caption page and shall be
7 filed under seal along with a motion to seal pursuant to Local Rule 10-5.

8 (d). Any CONFIDENTIAL or ATTORNEYS' EYES ONLY information
9 produced in a non-paper media (e.g., videotape, audiotape, computer disk, etc.) may be designated
10 as such by labeling the outside of such non-paper media as CONFIDENTIAL or ATTORNEYS'
11 EYES ONLY. In the event such non-paper media is transmitted via email the producing party may
12 designate the information produced as CONFIDENTIAL or ATTORNEYS' EYES ONLY by so
13 identifying such media in the email. In the event a receiving party generates any "hard copy,"
14 transcription, or printout from any such designated non-paper media, such party must stamp each
15 page CONFIDENTIAL or ATTORNEYS' EYES ONLY and the hard copy, transcription or
16 printout shall be treated as it is designated.
17

18 6. If any information designated CONFIDENTIAL or ATTORNEYS' EYES ONLY is
19 filed or submitted to the Court, it shall be produced in sealed envelopes or containers indicating the
20 following:

21 (a). the case caption;
22 (b). the nature of the contents therein; and
23 (c). the words "CONFIDENTIAL [or ATTORNEYS' EYES ONLY] – NOT TO
24 BE OPENED EXCEPT BY THE COURT, OR BY ORDER OF THE COURT."

25 7. All CONFIDENTIAL and ATTORNEYS' EYES ONLY information shall be used
26 solely for the purposes of this litigation, including discovery, motions, trial and hearing preparation,
27 and during trial or hearings and not for any other purpose.

28 8. Disclosure of all CONFIDENTIAL information shall be limited to:

1 (a). Those persons qualified to receive "Attorneys' Eyes Only" information under
2 paragraph 9; and

3 (b). The parties and their employees who are required to work directly on this
4 litigation, with disclosures only to the extent necessary to perform such work on a need-to-know
5 basis.

6 9. ATTORNEYS' EYES ONLY information shall not be disclosed, except by the prior
7 written consent of the disclosing party or owner, or pursuant to an order of this Court, to any person
8 other than the following:

9 (a). The outside attorneys of record working on this action on behalf of any party,
10 and any paralegal assistants, stenographic and clerical employees working under the direct
11 supervision of such counsel of record;

12 (b). Officers of the Court and supporting personnel or officers of any appellate
13 court to which any appeal may be taken in this litigation or in which review is sought, including
14 necessary stenographic and clerical personnel (e.g. court reporters);

15 (c). Other qualified reporters taking and videographers recording testimony
16 involving such information and necessary stenographic and clerical personnel thereof;

17 (d). Any person who is an author or recipient of that ATTORNEYS' EYES
18 ONLY material. Any employee of the party producing such materials may be shown copies of such
19 material during his or her testimony, but may not retain a copy of such information following the
20 deposition;

21 (e). Any person who is expressly retained or sought to be retained as an expert by
22 any outside attorney, described in paragraph 9(a) above, to assist in preparation of this action for
23 trial, who is not employed by, affiliated with (whether as a director, officer, contractor, consultant,
24 or otherwise), controlled by, an agent of, or materially interested in any party or any competitor of
25 any party, with disclosure only to the extent necessary to perform such work, as long as such
26 personnel first sign a Confidentiality Agreement (in the form attached as Appendix A hereto) and
27 comply with the provisions of this protective order, including paragraph 12; and

(f). Each person or service contracting firm retained by a party for the purpose of photocopying, scanning, translating, litigation support/database management, graphics, visual aids, and/or exhibits.

10. The foregoing lists in Paragraphs 8 and 9 may be expanded by mutual agreement in writing by counsel for the parties.

11. Nothing herein shall restrict the use of CONFIDENTIAL or ATTORNEYS' EYES ONLY information of the disclosing party or owner by the disclosing party or owner.

12. Prior to the disclosure of CONFIDENTIAL or ATTORNEYS' EYES ONLY information to persons in paragraph 8 or paragraph 9, the outside counsel of record in this litigation for the party making the disclosure shall advise each person that the information is CONFIDENTIAL or ATTORNEYS' EYES ONLY, can only be discussed with persons authorized by this Protective Order to view the material and can only be used for purposes of this litigation. Counsel shall retain and disclose to the other party a copy of a signed Confidentiality Undertaking of each person to whom disclosure is sought under paragraph 8 or paragraph 9. The written undertaking, which shall be in the form as illustrated in Appendix A hereto, shall acknowledge that he or she has read and understands this Protective Order, agrees to comply with this Protective Order, agrees that the CONFIDENTIAL or ATTORNEYS' EYES ONLY information will be used only to assist in this litigation, and agrees not to disclose or discuss CONFIDENTIAL or ATTORNEYS' EYES ONLY information with any person other than those authorized by this Order to view the material and to use it only for the purposes of this litigation. If any receiving party desires to disclose Protected Information under this provision to a FED. R. CIV. P. 26(a) expert, it must provide written notice to the counsel of record for the designating party and identify each such expert and provide a fully executed copy of Appendix A completed by the proposed expert and that individual's most updated curriculum vitae, including a list of all publications authored in the previous five (5) years and a statement identifying all other cases in which the expert has provided expert advice or testified as an expert at trial or by deposition in the last four (4) years. If the designating party does not, within ten (10) business days of receipt of such notice,

1 object in writing — based on a perceived conflict of interest on the part of the proposed expert — to
2 the counsel of record for the receiving party, setting forth the grounds for the objection and stating
3 which categories (among the categories of Confidential and Attorneys' Eyes Only), it objects to the
4 disclosure of, the Protected Information may then be disclosed to the expert subject to the terms of
5 this protective order. If timely objection is made and the parties cannot resolve the issue, the
6 receiving party may thereupon seek an appropriate order from the Court allowing disclosure of the
7 Protected Information to the proposed expert, and the receiving party shall have the burden of proof
8 with respect to the propriety of the sought disclosure of Protected Information to the proposed
9 expert. The disclosure of the identity of a proposed expert will not be a waiver of any privilege or
10 work product protection that applies to that expert. Further, the parties agree that by stipulating to
11 the entry of this Protective Order, the parties do not intend to modify in any way the discovery rules
12 applicable to consulting or testifying experts.

13 13. A party shall not be obligated to challenge the propriety of a CONFIDENTIAL or
14 ATTORNEYS' EYES ONLY designation at the time made, and failure to do so shall not preclude a
15 subsequent challenge thereto. In the event that any party to this litigation disagrees at any stage of
16 these proceedings with such designation, such party shall provide to the producing party written
17 notice of its disagreement with the designation. The parties shall first try to dispose of such dispute
18 in good faith on an informal basis. If the dispute cannot be resolved, the party challenging the
19 designation may request appropriate relief from the Court, but in any event, such relief from the
20 Court shall not be requested before five (5) business days after the producing party is served with
21 said written notice.

23 14. Failure of counsel to designate or mark any document, thing, or testimony as
24 CONFIDENTIAL or ATTORNEYS' EYES ONLY information as provided above shall not
25 preclude the disclosing party or owner of the protected information from thereafter in good faith
26 making such designation and requesting the receiving party to so mark and treat such documents
27 and things so designated even after the expiration of the "ten (10) business days" designation period
28 described in paragraph 5(a). The receiving party, however, shall make reasonable efforts to assure

1 that the materials are treated in accordance with the provisions of this Order, but shall not incur
2 liability for disclosures made prior to notice of such designations.

3 15. If CONFIDENTIAL or ATTORNEYS' EYES ONLY information is disclosed to
4 any person other than in the manner authorized by this Protective Order, the person responsible for
5 the disclosure shall immediately bring all pertinent facts relating to such disclosure to the attention
6 of counsel of record for all parties, without prejudice to other rights and remedies of any party, and
7 shall make every effort to prevent further disclosure by it or by the person who was the recipient of
8 such information.

9 16. In the event that any CONFIDENTIAL or ATTORNEYS' EYES ONLY information
10 is used in any court proceeding in connection with this litigation, it shall not lose its
11 CONFIDENTIAL or ATTORNEYS' EYES ONLY status through such use, and the parties shall
12 take all steps reasonably required to protect its confidentiality during such use.

13 17. The disclosure, through inadvertence, mistake, accident, or other error, by one party
14 to another of the substance of any document or communication entitled to protection under the
15 ATTORNEY-CLIENT PRIVILEGE and/or THE ATTORNEY WORK-PRODUCT DOCTRINE
16 shall not constitute a waiver of such protection as to the subject matter of that, or related,
17 documents or communications. If during the discovery process in this case either party mistakenly
18 produces a document entitled to protection under the attorney-client privilege or the attorney work-
19 product doctrine, the producing party may, at any time prior to the commencement of trial, but in
20 any event not more than fifteen (15) calendar days after the disclosure is first identified as
21 containing potentially privileged or work product information, marked as a deposition exhibit, or
22 identified as a potential trial exhibit, request the return or destruction of the document and all copies
23 thereof. Such a request must be made in writing and must identify the basis for the privilege or
24 work product claimed.

25 18. In the case of documents, if the party that received the document agrees that it is
26 PRIVILEGED or WORK PRODUCT (without regard to its production), then the document and all
27 copies shall promptly be returned to the producing party or destroyed, and no reference to such
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1 document shall be made in connection with the proof of the facts in this dispute. If the party that
2 received the document does not agree that the document was privileged, then it shall so notify the
3 producing party within ten (10) calendar days of receiving written notice of the asserted privilege or
4 work product protection. In such event, the producing party may move the Court to resolve the
5 question. Unless the parties otherwise agree in writing, any such motion must be made within
6 fifteen (15) calendar days of receiving notification that the recipient of the document disputes the
7 claim of privilege or work product. If the Court rules that the document is protected (without
8 regard to the fact of production), then the party that received the document shall promptly return the
9 document and all known copies to the producing party (except that counsel of record may retain
10 copies as needed for the sole purpose of seeking reconsideration or appellate review of the Court's
11 ruling on the question of privilege) and shall make no reference to the document in connection with
12 the proof of the facts in this case.

13 19. Within 60 days after the final termination of this litigation, counsel for each party
14 shall return to the originating source, or certify in writing the destruction of, all CONFIDENTIAL
15 and ATTORNEYS' EYES ONLY information and all copies thereof and work product created
16 therefrom; provided, however, counsel of record for each party may retain one copy of each
17 document.

18 20. Nothing herein shall prevent any party from moving the court for modification of
19 this Protective Order for good cause.

20 21. Except as specifically provided herein, the terms, conditions, and limitations of this
21 Protective Order shall survive the termination of this action.

22 22. Nothing herein shall be deemed to constitute a waiver of any objection a producing
23 party may have to any request for production of documents or other requested discovery. Nothing
24 herein shall prevent any party from objecting to production of documents or to other discovery
25 requests on any available grounds, or from seeking alternative protective orders from the Court.
26

1 DATED this 17th day of April, 2014.
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Respectfully Submitted,

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6 McDONALD CARANO WILSON LLP
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KOCH & SCOW LLC
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By: s/ Brian C. Park
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13 *Attorneys for Defendants*

14 *Global Links Corporation*
and BXI Trade Exchange, Inc.

15 *Attorneys for Plaintiff*

16 *ITEX Corporation*

ORDER

IT IS SO ORDERED.

UNITED STATES MAGISTRATE JUDGE

DATED: April 18, 2014

SUBMITTED BY:

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By: s/ Brian C. Park

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APPENDIX A

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18 *Attorneys for Plaintiff ITEX Corporation*

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21 IN THE UNITED STATES DISTRICT COURT
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23 FOR THE DISTRICT OF NEVADA

24 ITEX CORPORATION, a Nevada corporation,
25 Plaintiff,

26 v.

27 GLOBAL LINKS CORP., a Nevada
28 corporation, and BXI TRADE EXCHANGE,
INC., a Nevada corporation,

Defendants.

Case No.: 2:14-CV-00057-RCJ-NJK

**CONFIDENTIALITY UNDERTAKING
REGARDING PROTECTIVE ORDER**

I, _____, declare that:

1. My address is _____.
2. My present employer is _____.
3. My present occupation or job description is _____.

4. I have carefully read and received a copy of the foregoing Protective Order entered
in this action on _____, 2014.

5. I hereby agree, under penalty of contempt of court, to be bound by and comply with the terms of the Protective Order and not to disseminate or disclose any information governed by the Protective Order, which I either review or about which I am told, to any person, entity, party, or agency for any reason, except in accordance with the terms of the Protective Order.

6. I will return all confidential material that comes into my possession, custody, or control, as well as any documents or things that I have prepared relating thereto, to counsel for the party by whom I am employed, consulted, or retained.

7. I further agree to submit to the jurisdiction of this Court for the purposes of enforcement of the terms of this Protective Order.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

EXECUTED this _____ day of _____, 2014.

(Signature)

(Printed Name)